
HOUSE BILL 1986

State of Washington 60th Legislature 2007 Regular Session

By Representatives Warnick, Kretz, Haler, Hinkle, Sump, Orcutt, Newhouse, Lantz, McCune, Armstrong, Kristiansen and Rodne

Read first time 02/02/2007. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to enhancing the punishment for theft when the
2 damages to the victim greatly exceed the value of the stolen property;
3 reenacting and amending RCW 9.94A.533; and adding a new section to
4 chapter 9.94A RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 (1) In a prosecution for theft in the first or second degree, the
9 prosecution may file a special allegation of disproportionate impact
10 when sufficient admissible evidence exists, which, when considered with
11 the most plausible, reasonably foreseeable defense that could be raised
12 under the evidence, would justify a finding by a reasonable and
13 objective fact-finder that the damage to the victim greatly exceeds the
14 value of the stolen property.

15 (2) Once a special allegation has been made under this section, the
16 state has the burden to prove beyond a reasonable doubt that the damage
17 to the victim greatly exceeds the value of the stolen property. If a
18 jury is had, the jury shall, if it finds the defendant guilty, also
19 find a special verdict as to whether the damage to the victim greatly

1 exceeds the value of the stolen property. If no jury is had, the court
2 shall make a finding of fact as to whether the damage to the victim
3 greatly exceeds the value of the stolen property.

4 **Sec. 2.** RCW 9.94A.533 and 2006 c 339 s 301 and 2006 c 123 s 1 are
5 each reenacted and amended to read as follows:

6 (1) The provisions of this section apply to the standard sentence
7 ranges determined by RCW 9.94A.510 or 9.94A.517.

8 (2) For persons convicted of the anticipatory offenses of criminal
9 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
10 standard sentence range is determined by locating the sentencing grid
11 sentence range defined by the appropriate offender score and the
12 seriousness level of the completed crime, and multiplying the range by
13 seventy-five percent.

14 (3) The following additional times shall be added to the standard
15 sentence range for felony crimes committed after July 23, 1995, if the
16 offender or an accomplice was armed with a firearm as defined in RCW
17 9.41.010 and the offender is being sentenced for one of the crimes
18 listed in this subsection as eligible for any firearm enhancements
19 based on the classification of the completed felony crime. If the
20 offender is being sentenced for more than one offense, the firearm
21 enhancement or enhancements must be added to the total period of
22 confinement for all offenses, regardless of which underlying offense is
23 subject to a firearm enhancement. If the offender or an accomplice was
24 armed with a firearm as defined in RCW 9.41.010 and the offender is
25 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
26 commit one of the crimes listed in this subsection as eligible for any
27 firearm enhancements, the following additional times shall be added to
28 the standard sentence range determined under subsection (2) of this
29 section based on the felony crime of conviction as classified under RCW
30 9A.28.020:

31 (a) Five years for any felony defined under any law as a class A
32 felony or with a statutory maximum sentence of at least twenty years,
33 or both, and not covered under (f) of this subsection;

34 (b) Three years for any felony defined under any law as a class B
35 felony or with a statutory maximum sentence of ten years, or both, and
36 not covered under (f) of this subsection;

1 (c) Eighteen months for any felony defined under any law as a class
2 C felony or with a statutory maximum sentence of five years, or both,
3 and not covered under (f) of this subsection;

4 (d) If the offender is being sentenced for any firearm enhancements
5 under (a), (b), and/or (c) of this subsection and the offender has
6 previously been sentenced for any deadly weapon enhancements after July
7 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
8 (4)(a), (b), and/or (c) of this section, or both, all firearm
9 enhancements under this subsection shall be twice the amount of the
10 enhancement listed;

11 (e) Notwithstanding any other provision of law, all firearm
12 enhancements under this section are mandatory, shall be served in total
13 confinement, and shall run consecutively to all other sentencing
14 provisions, including other firearm or deadly weapon enhancements, for
15 all offenses sentenced under this chapter. However, whether or not a
16 mandatory minimum term has expired, an offender serving a sentence
17 under this subsection may be granted an extraordinary medical placement
18 when authorized under RCW 9.94A.728(4);

19 (f) The firearm enhancements in this section shall apply to all
20 felony crimes except the following: Possession of a machine gun,
21 possessing a stolen firearm, drive-by shooting, theft of a firearm,
22 unlawful possession of a firearm in the first and second degree, and
23 use of a machine gun in a felony;

24 (g) If the standard sentence range under this section exceeds the
25 statutory maximum sentence for the offense, the statutory maximum
26 sentence shall be the presumptive sentence unless the offender is a
27 persistent offender. If the addition of a firearm enhancement
28 increases the sentence so that it would exceed the statutory maximum
29 for the offense, the portion of the sentence representing the
30 enhancement may not be reduced.

31 (4) The following additional times shall be added to the standard
32 sentence range for felony crimes committed after July 23, 1995, if the
33 offender or an accomplice was armed with a deadly weapon other than a
34 firearm as defined in RCW 9.41.010 and the offender is being sentenced
35 for one of the crimes listed in this subsection as eligible for any
36 deadly weapon enhancements based on the classification of the completed
37 felony crime. If the offender is being sentenced for more than one
38 offense, the deadly weapon enhancement or enhancements must be added to

1 the total period of confinement for all offenses, regardless of which
2 underlying offense is subject to a deadly weapon enhancement. If the
3 offender or an accomplice was armed with a deadly weapon other than a
4 firearm as defined in RCW 9.41.010 and the offender is being sentenced
5 for an anticipatory offense under chapter 9A.28 RCW to commit one of
6 the crimes listed in this subsection as eligible for any deadly weapon
7 enhancements, the following additional times shall be added to the
8 standard sentence range determined under subsection (2) of this section
9 based on the felony crime of conviction as classified under RCW
10 9A.28.020:

11 (a) Two years for any felony defined under any law as a class A
12 felony or with a statutory maximum sentence of at least twenty years,
13 or both, and not covered under (f) of this subsection;

14 (b) One year for any felony defined under any law as a class B
15 felony or with a statutory maximum sentence of ten years, or both, and
16 not covered under (f) of this subsection;

17 (c) Six months for any felony defined under any law as a class C
18 felony or with a statutory maximum sentence of five years, or both, and
19 not covered under (f) of this subsection;

20 (d) If the offender is being sentenced under (a), (b), and/or (c)
21 of this subsection for any deadly weapon enhancements and the offender
22 has previously been sentenced for any deadly weapon enhancements after
23 July 23, 1995, under (a), (b), and/or (c) of this subsection or
24 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
25 weapon enhancements under this subsection shall be twice the amount of
26 the enhancement listed;

27 (e) Notwithstanding any other provision of law, all deadly weapon
28 enhancements under this section are mandatory, shall be served in total
29 confinement, and shall run consecutively to all other sentencing
30 provisions, including other firearm or deadly weapon enhancements, for
31 all offenses sentenced under this chapter. However, whether or not a
32 mandatory minimum term has expired, an offender serving a sentence
33 under this subsection may be granted an extraordinary medical placement
34 when authorized under RCW 9.94A.728(4);

35 (f) The deadly weapon enhancements in this section shall apply to
36 all felony crimes except the following: Possession of a machine gun,
37 possessing a stolen firearm, drive-by shooting, theft of a firearm,

1 unlawful possession of a firearm in the first and second degree, and
2 use of a machine gun in a felony;

3 (g) If the standard sentence range under this section exceeds the
4 statutory maximum sentence for the offense, the statutory maximum
5 sentence shall be the presumptive sentence unless the offender is a
6 persistent offender. If the addition of a deadly weapon enhancement
7 increases the sentence so that it would exceed the statutory maximum
8 for the offense, the portion of the sentence representing the
9 enhancement may not be reduced.

10 (5) The following additional times shall be added to the standard
11 sentence range if the offender or an accomplice committed the offense
12 while in a county jail or state correctional facility and the offender
13 is being sentenced for one of the crimes listed in this subsection. If
14 the offender or an accomplice committed one of the crimes listed in
15 this subsection while in a county jail or state correctional facility,
16 and the offender is being sentenced for an anticipatory offense under
17 chapter 9A.28 RCW to commit one of the crimes listed in this
18 subsection, the following additional times shall be added to the
19 standard sentence range determined under subsection (2) of this
20 section:

21 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
22 (a) or (b) or 69.50.410;

23 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
24 (c), (d), or (e);

25 (c) Twelve months for offenses committed under RCW 69.50.4013.

26 For the purposes of this subsection, all of the real property of a
27 state correctional facility or county jail shall be deemed to be part
28 of that facility or county jail.

29 (6) An additional twenty-four months shall be added to the standard
30 sentence range for any ranked offense involving a violation of chapter
31 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
32 9.94A.605. All enhancements under this subsection shall run
33 consecutively to all other sentencing provisions, for all offenses
34 sentenced under this chapter.

35 (7) An additional two years shall be added to the standard sentence
36 range for vehicular homicide committed while under the influence of
37 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
38 prior offense as defined in RCW 46.61.5055.

1 (8)(a) The following additional times shall be added to the
2 standard sentence range for felony crimes committed on or after July 1,
3 2006, if the offense was committed with sexual motivation, as that term
4 is defined in RCW 9.94A.030. If the offender is being sentenced for
5 more than one offense, the sexual motivation enhancement must be added
6 to the total period of total confinement for all offenses, regardless
7 of which underlying offense is subject to a sexual motivation
8 enhancement. If the offender committed the offense with sexual
9 motivation and the offender is being sentenced for an anticipatory
10 offense under chapter 9A.28 RCW, the following additional times shall
11 be added to the standard sentence range determined under subsection (2)
12 of this section based on the felony crime of conviction as classified
13 under RCW 9A.28.020:

14 (i) Two years for any felony defined under the law as a class A
15 felony or with a statutory maximum sentence of at least twenty years,
16 or both;

17 (ii) Eighteen months for any felony defined under any law as a
18 class B felony or with a statutory maximum sentence of ten years, or
19 both;

20 (iii) One year for any felony defined under any law as a class C
21 felony or with a statutory maximum sentence of five years, or both;

22 (iv) If the offender is being sentenced for any sexual motivation
23 enhancements under (i), (ii), and/or (iii) of this subsection and the
24 offender has previously been sentenced for any sexual motivation
25 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
26 this subsection, all sexual motivation enhancements under this
27 subsection shall be twice the amount of the enhancement listed;

28 (b) Notwithstanding any other provision of law, all sexual
29 motivation enhancements under this subsection are mandatory, shall be
30 served in total confinement, and shall run consecutively to all other
31 sentencing provisions, including other sexual motivation enhancements,
32 for all offenses sentenced under this chapter. However, whether or not
33 a mandatory minimum term has expired, an offender serving a sentence
34 under this subsection may be granted an extraordinary medical placement
35 when authorized under RCW 9.94A.728(4);

36 (c) The sexual motivation enhancements in this subsection apply to
37 all felony crimes;

1 (d) If the standard sentence range under this subsection exceeds
2 the statutory maximum sentence for the offense, the statutory maximum
3 sentence shall be the presumptive sentence unless the offender is a
4 persistent offender. If the addition of a sexual motivation
5 enhancement increases the sentence so that it would exceed the
6 statutory maximum for the offense, the portion of the sentence
7 representing the enhancement may not be reduced;

8 (e) The portion of the total confinement sentence which the
9 offender must serve under this subsection shall be calculated before
10 any earned early release time is credited to the offender;

11 (f) Nothing in this subsection prevents a sentencing court from
12 imposing a sentence outside the standard sentence range pursuant to RCW
13 9.94A.535.

14 (9) An additional twelve months and one day shall be added to the
15 standard sentence range for theft in the first or second degree if
16 there has been a special verdict or finding that the damage to the
17 victim greatly exceeds the value of the stolen property under section
18 1 of this act.

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